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Crl.R.C.No.331 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2023

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.331, 333, 334, 368, 370, 377, 378 of 2020

and

Crl.M.P.Nos.2495,2498,2497,2726, 2731,2751,2753 of 2020

Selvaperumal

... Petitioner in all Crl.R.C's

Vs.

The State represented by
The Inspector of Police,
Commercial Crime Investigation Wing,
Thiruvallur.

... Respondent in all Crl.R.C's

Prayer: Criminal :Revision Petition filed under Section 397 read with 401 of Cr.P.C., to set aside the conviction and sentence made in Criminal Appeal Nos.56, 55, 60, 59, 54, 57 & 58 of 2013 dated 31.10.2019 on the file of the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, in confirming the judgment made in C.C.Nos.125, 124, 129, 128, 123, 126 & 127 of 2008 dated 02.08.2013 on the file of the Judicial Magistrate No.II at Ponneri.



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For Petitioner: Mr.A.Saranraj

For Respondent : Mr.S.Sugendran
Additional Public Prosecutor

COMMON ORDER

These Criminal Revision Petitions have been filed against the judgment dated 31.10.2019 passed in Criminal Appeal Nos.56, 55, 60, 59, 54, 57 & 58 of 2013 on the file of the IV Additional District and Sessions Judge, Thiruvallur @ Ponneri, confirming the judgment dated 02.08.2013 passed in C.C.Nos.125, 124, 129, 128, 123, 126 & 127 of 2008 on the file of the Judicial Magistrate No.II, Ponneri.

2. The Revision Petitioner/A2 was working as Clerk in Sholavaram Primary Agricultural Co-operative Bank. A1 was working as Secretary in the abovesaid Bank and was maintaining all the money transactions and issued loans to the farmers. Both of them have misappropriated funds by making false entries in the Loan Ledger, Cash book and Loan Disposal Register of Primary Agricultural Co-operative Bank, Sholavaram. During audit, it was found that

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sum of Rs.5,28,149/- was misappropriated by making false entries in the related ledgers by A1 and A2. Enquiry under Section 81 of Tamilnadu Co-operative Societies Act, 1983 was ordered and found that A2, who is the petitioner herein and A1 committed offences under Sections 408, 467 and 477-A read with 34 IPC. The respondent/Police registered the cases and after investigation, laid the charge sheet before the Judicial Magistrate No.II, Ponneri and the same were taken on file in C.C.Nos.123 to 129 of 2008. The learned Magistrate, after framing charges and conducting trial, found that the revision petitioner/A2 and A1 guilty for the offences under Sections 408, 467 and 477(A) read with 34 IPC and they were convicted and sentenced to undergo one year simple imprisonment and to pay fine of Rs.1,000/-, in default to undergo one month simple imprisonment for the offence under Section 408 IPC. They were also convicted and sentenced to undergo one year simple imprisonment and to pay fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 467 IPC and further convicted and sentenced to undergo one year simple imprisonment for the offence under Section 477-A read with 34 IPC and all the sentences were ordered to run concurrently. Against the order of conviction and sentence



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passed by the trial court, both the accused have filed the Criminal Appeal in CrI.A.Nos. 54 to 60 of 2013 before the Principal District and Sessions Judge, Thiruvallur and the same were made over to the IV Additional District and Sessions Juddge, Thiruvallur @ Ponneri. The learned IV Additional District Judge, on hearing the arguments advanced on either side and considering the materials, re-appreciated the evidence and dismissed the appeals, by confirming the judgment of the trial court. Challenging the said judgment of dismissal, the petitioner/A2 has filed the present Criminal Revision Cases before this Court.

3. The learned counsel for the petitioner submitted that the trial court has framed the following six points for determining the case:

- i. Whether there is any delay in registering the F.I.R and if so, is the accused prejudiced due to such delay?
- ii. Whether the delay in completing the Audit under Section 80 of the Tamilnadu Co-operative Societies Act by P.W.5-Auditor and the delay in completing the inquiry under Section 81 of the said Act by P.W.5-Inquiry Officer as stipulated in sub-clause 4 of the Section 81 of the said Act, is not sustainable ?



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- iii. Whether there is any bar as per Section 87 and Section 164 of the Tamilnadu Co-operative Societies Act to prosecute the accused under the Indian Penal Code?
- iv. Whether benefit of doubt could be given to the accused for non-examination of the listed witnesses by the prosecution?
- v. Whether A2 has connected in the crime, since he held the “Sales Man” post in the society?
- vi. Whether the case of the prosecution has been proved as against the accused beyond all reasonable doubt?

The trial court failed to consider the abovesaid points and simply found the petitioner guilty of the abovesaid offences. The appellate court also failed to re-appreciate the evidence and simply endorsed the views of the trial court, and dismissed the appeal, which warrants interference of this Court.

4. Learned counsel for the revision petitioner further submitted that no plausible explanation has been given for the delay in registering the case, delay in completing the audit under Section 80 of the Tamilnadu Co-operative Societies Act and delay in completing the inquiry under Section 81 of the Tamilnadu Co-operative Societies Act. The petitioner was working as Clerk in the Primary Agricultural Co-operative Bank and A1 who was working as the



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Secretary was empowered with all sorts of transactions. The petitioner herein has nothing to do with the alleged offences. The petitioner was appointed only as Fertilizer Distributor. The petitioner was no way connected with the alleged offences. There is no material to show that A1 and A2 with common intention, misappropriated the funds and caused loss to the institution. P.W.5-the enquiry officer has not conducted the enquiry properly. There was no specific overt act as against the petitioner, except that the petitioner was appointed as Fertilizer Distributor as per the resolution-Ex.P10. There is no material to connect the petitioner with the alleged offences. The petitioner was working from 1988 to till 2000 and many annual audit, internal audit and external audit were conducted during the period and it was periodically reported by the concerned auditor that all the transactions were in order for the said period. During that period, no complaint was registered as against the petitioner. The present complaint was preferred in the year 2005. The trial court as well as the appellate court failed to appreciate and re-appreciate the evidence and erroneously convicted the petitioner. Hence the judgment of both the Courts below are perverse and the same may be set aside.



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5. Learned Additional Public Prosecutor appearing for the respondent submitted that A1 and A2 were working under Sholavaram Primary Agricultural Co-operative Bank as Secretary and Clerk respectively during the period from 1988 to 2000. Both of them have mis-appropriated and made false entries in the Loan Ledger and Cash Book and Loan Disposal Register of Primary Agricultural Co-operative Bank, Sholavaram. They have committed criminal breach of trust by falsification of accounts. On verification, P.W.3 found the irregularities and violations committed by the accused. P.W.3 ordered enquiry under Section 81 of Tamilnadu Co-operative Societies Act. P.W.5, who is the enquiry officer, had conducted enquiry and after getting extension of time as per Exs. P4 and P5, submitted a report Ex.P9. Ex.P12 to 68 clearly proved the false entries made in the accounts and ledgers by the accused. Since there was misappropriation of amount on the basis of false entries in the Loan Disposal Register, Loan Ledger and Cash book, P.W.1 has preferred a complaint-Ex.P1. Based on the complaint, F.I.R was registered for the offences punishable under Section 408, 467 and 477-A read with 34 of IPC against the accused persons.



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6. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

7. On perusal of the records, it is proved that the petitioner was working as Clerk / Fertilizer Distributor and the same has been proved by Ex.P10. P.W.3 appointed P.W.5 as enquiry officer to conduct enquiry under Section 81 of the Tamilnadu Co-operative Societies Act. Ex.P9-Enquiry report clearly reveals that the revision petitioner along with A1, misappropriated the funds of the Bank and mishandled the records by making false entries in the loan ledger, Cash Book and Loan Disposal Register of the Primary Agricultural Co-operative Bank, Sholavaram. Though enquiry under Section 81 of Tamilnadu Co-operative Societies Act, 1983 has not been submitted by P.W.5- enquiry officer within the stipulated time, he obtained extension of time through Exs.P3 and P5 to complete the enquiry. Therefore, mere non-submission of enquiry report within the stipulated time, may not be the sole ground to acquit the petitioner from the serious offences like misappropriation of funds and falsification of records. When the institution came to know about the



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misappropriation of funds and falsification of records, immediately they initiated enquiry under Section 81 of the Co-operative Societies Act against the accused. P.W.5-enquiry officer has also conducted enquiry and submitted the report, which clearly reveals that A1 was working as Secretary and the petitioner was working as Clerk and was also appointed as Fertilizer Distributor during the relevant point of time. Both A1 and A2 have handled all the records and registers. Exs.P12 to P68 clearly show the false entries made by the accused in loan ledger, cash book and Loan Disposal Register of the said Bank. Based on the enquiry report, P.W.1 has preferred a complaint and the case was registered in Crime No.8 of 2005 for the offences under Section 467, 408, 477-A read with 34 IPC as against the accused persons. After investigation, the respondent/ Police laid a charge sheet before the trial court. On the side of the prosecution, totally 14 witnesses were examined as P.Ws.1 to 14. Statements of P.Ws.4,6,7,8 and 14 and Exs.6, 69 to 72 clearly show that during the relevant of point of time, the petitioner was working in the said Bank. Though Audit would be conducted every year, apart from the audit report, the report filed by the enquiry officer reveals about the irregularities and illegalities committed by the petitioner. The evidence of P.W.1 and P.W.3-



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Deputy Registrars, P.W.5-Sub Registrar and Ex.P9 report filed by P.W.5-enquiry officer, clearly show that the accused 1 and 2 have misappropriated the amount and made false entries and corrections in the ledger.

8. Scope of Revision is very limited and this Court cannot act as trial court or the appellate court to re-appreciate or revisit the entire evidence, unless there is a perversity in appreciation of evidence. This Court as revisional court, on going through the entire materials, finds that there is no perversity in appreciation of evidence by the trial court and re-appreciation of the evidence by the appellate court. Both the Courts below rightly appreciated the entire evidence and convicted the petitioner. This Court does not find any perversity in the impugned order passed by both the Courts below. There is no merit in the Revision Cases and the same are liable to be dismissed. Accordingly, the Criminal Revision Cases are dismissed. Consequently, connected miscellaneous petitions are closed.

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Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

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To

1. The IV Additional District and Sessions Judge,
Thiruvallur @ Ponneri.
2. The Judicial Magistrate No.II, Ponneri.
3. The Inspector of Police,
Commercial Crime Investigation Wing,
Thiruvallur.
4. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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and
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